THE ANCIENTS AND MODERNS COMPARED IN REGARD TO THE ADMINISTRATION OF JUSTICE.

AN ENGLISH ESSAY.

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THE ANCIENTS AND MODERNS COMPARED IN REGARD TO THE ADMINISTRATION OF JUSTICE.

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"Un peuple qui n'intervient point dans les jugements peut être heureux, tranquille, bien gouverné ; il ne s'appartient pas à lui même, il n'est pas libre, il est sous le glaive."

GUIZOT, HISTOIRE DE LA CIVILIZATION EN FRANCE, leç. xi.

IN the primitive societies of mankind, we find no attempt made to classify or divide the various functions of Government. The same persons were by turns judges, rulers and legislators. As civilization advanced, and the circle of men's ideas became enlarged, the first change which suggested itself was the separation of the judicial from the legislative and executive powers. By degrees however it was found, that the administration of justice alone involved a great variety of functions, which might with more safety or convenience be entrusted to different persons. Thus the administrative and the strictly judicial branches, the power of applying the law and the power of deciding on the fact, came to be themselves

vested in separate functionaries.[1] It must not be imagined, however, that such a partition took place at any fixed time, or that it was the result of any fixed principle. What has been so often remarked of the whole political body is true also of the judicial system. Its formation has been gradual and imperceptible. As the exigencies of society required, its different branches have sprung naturally and spontaneously out of each other.

A growth so irregular could not fail to produce many anomalies. In the case of modern jurisprudence this is especially true. In a great measure it is the continuation of a more ancient system; yet to that system, as we at present see it, it bears little affinity. Although, however, the streams which have contributed to its formation are so many and various, we find no difficulty in tracing these streams to their separate sources, and analysing the different properties by which each is distinguished. Thus we see, for instance, that in some countries the judicial functions

[1] See Grote's History of Greece, chap. xlvi. init. Also Lewis's Essay on the Government of Dependencies, p. xliii. et seqq. Compare also a note to Hallam's Constit. Hist. vol. i. p. 6. Stephen's Commentaries, vol. iii. p. 622, and Vaughan's Inaugural Lecture. "At the earliest periods of modern history in our own country, the king and his council executed the laws as well as framed them. By continual separation of functions this council has developed itself into three courts of common law, two houses of parliament, many courts of equity, a grand chamber of appeal, a privy council and a cabinet."

have been originally delegated to a class of men charged by their profession with this especial duty. In others the same powers have been exercised by the members of the society themselves, either collectively, or by means of deputies indiscriminately chosen from the whole body. In others again they have been confided to tribunals composed of individuals of the same rank and locality as the persons concerned; the representatives, not as before of the state, but in some sense of the contending parties.[2] Nor must we forget that the systems, which have sprung out of the adoption of these three methods, themselves correspond with many important facts in the progress of civilization. We will endeavour to shew how it is that each has become by turns predominant, and what effects they have severally produced.

If we turn to the earliest ages of the world, we find the power of judging invested with a sort of religious character, and accordingly exercised as a most important right by the heads of the patriarchal family, and their later representatives, the kings of the heroic times.[3] In the period immediately succeeding,

[2] Guizot, Hist. de la Civilization en France, sec. x. passim. Hallam's notes to Middle Ages, note 138, Trial by Jury. Montesquieu, Esprit des Loix, xi. 6.

[3] Grote, chap. xx. "The King is spoken of as constituted by Zeus the judge of the society, &c." See also Il. i. 238, ii. 206, &c.

the kings have disappeared, yet the same power, still retaining somewhat of its original character, remains vested in the great aristocratical and semi-religious assemblies,[4] in the Areopagus at Athens, in the council of the Curies at Rome. These assemblies at once judged disputes, inquired into crimes, and pronounced sentence of punishment. Here then, in the existence of a special body invested with the right of judging, we recognise the presence of the first system, controlled by no further check, weakened by no division of privileges. Such a division was incompatible with the rudeness of the times; it was incompatible moreover with the character of the office. Sacred and inviolate, it became also indissoluble and entire.[5]

Let us look forward a century or two. In Greece the old aristocratic councils have every where given way to assemblies of a more popular character. A similar change has taken place in the judicial arena. At Athens this change was finally completed by Pericles, about the middle of the fifth century. Into its details it were needless to enter at present. If

[4] Cf. Demosth. Neær. 1373, Müller's Eumen. passim, also Liv. i. 26.

[5] See Hermann De Jure et Auctoritate apud Ath. p. 53. Müll. Eumen. p. 35. and Arist. Polit. ii. 9. 3, *τὴν μὲν ἐν Ἀρείῳ πάγῳ βουλὴν ἐκόλουσε Περικλῆς.* Plato Reip. Prac. quoted by Grote. Also Cic. de Nat. Deorum, ii. 29.

we look to its general tendencies, we discover two important principles which it sought to establish. The first of these is the separation of the administrative and the judicial functions.[6] The former is still reserved to the Archons, the latter is entrusted to an entirely new court of six thousand men, chosen by lot from the whole body of the citizens. It must not be supposed, however, that the partition was either equal or complete. The power of the Dicasts, who judged the case, was greatly disproportioned to that of the Archons, who introduced and conducted it. They were not only empowered, like our juries, to decide on the fact; they even arbitrated questions of law, and adjudged punishments; the Archons being nothing more than their assessors, or the registrars of their decrees. Besides, the Archons themselves were not, as before, magistrates elected from the three richer classes of citizens, eminent by their wealth and the almost sacred prestige of an ancient office.[7] They were chosen by lot, like the Dicasts, to whom they were too nearly assimilated by birth, sentiments, and mode of election, to prove an effective check on their encroachments.[8]

[6] Grote, vol. v. p. 480. and Arist. loc. cit.

[7] The election by lot was introduced by Cleisthenes. There is some doubt whether it was ever open entirely to the Thetes. See the question debated in Schömann, De Com. Ath. p. 296 et seqq.

[8] Grote, quoted above.

So far, then, the objects of the change were only incompletely fulfilled. But those who introduced it had another end in view, which was more important, and which they more effectually carried out. This was no less than the substitution of the popular assembly for the privileged tribunal; of the community for the class. In the courts of the Heliæa, the accused was emphatically tried by the state.[9] The fact is important, inasmuch as it furnishes one great distinction between the Grecian tribunals, and what we are accustomed to call Trial by Peers. It may indeed be asserted, that the aim of both systems was the same; for, according to the Greek political theory, which merged all personality in the one idea of the state, the individual was already represented in the society at large. Practically, however, this was not the case. The Athenian Dicasts, as might have been expected, did not represent the state; they represented only a faction or portion of it, in general the poorer and more democratic body; and, as so doing, are the subjects of the perpetual ridicule and invective of the conservative Aristophanes.[1] Their numbers, which, it

[9] See a very remarkable passage in Arist. Polit. iv. 5. 6, *ἔτι δ' οἱ ταῖς ἀρχαῖς ἐγκαλοῦντες τὸν δῆμόν φασι δεῖν κρίνειν· ὥστε συγκαταλύονται αἱ ἀρχαί*; which seems to refer to the changes effected by Pericles. See however Grote, p. 493. With the passage in Aristotle may be compared, Plat. Legg. vi. *πάντα ἄρχοντα ἀναγκαῖον καὶ δικαστὴν εἶναι.*

[1] Arist. in Vesp. and Acharn., with Schol. Xen. Rep. i. 13.

is true, for the most part rendered them inaccessible to bribery, exposed them to all the inherent vices of large popular assemblies. Almost as numerous as the Ecclesiasts, equally irresponsible, and still more uncontrolled, they yielded in like manner to the dictates of passion or prejudice, or were swayed to and fro by the artifice or eloquence of some favorite rhetorician. Even the advocates who addressed them seem to take it for granted that their judges will decide rather according to party convictions than according to the true merits of the case before them.[2] In such functionaries we must not expect the cautious circumspection of modern juries. They were the sovereign people, who pardoned rather than acquitted, who condemned rather than convicted.[3]

As we have already seen, their decisions were not, like those of our jurymen, restricted to questions of fact, or trammelled by the control of professional judges. They weighed evidence, they decided on the applicability of the law, they adjudicated facts, they punished offenders. It was but natural, that a

[2] Æsch. adv. Tim. p. 37.

[3] So Niebuhr, sect. ii. 53, says of the Roman courts; "The people who formerly judged in the popular courts pronounced their sentence in the capacity of sovereign; so that pardoning and acquitting coalesced as identical; and as there was no other place in which the power of pardoning could manifest itself, it entered into the tribunals of justice." Compare Apol. Socr.

machinery so inartificial should prove clumsy and inefficient in its working. Let us turn for a moment to the trials at Athens of which records have been preserved to us by the orators. We cannot help seeing at once that the advocates, and their speeches, engrossed the chief attention of the judges. The evidence on both sides is quite a subordinate matter; the law is still more so. Indeed the judges are supposed to vote, not merely according to the evidence which they hear in court, but according to their private information and inquiries. Thus Æschines, in his speech against Timarchus, enlarges upon the duty of the jury to listen to the voice of Rumour, to which, as to a great goddess, the state had in former times erected a peculiar altar.[4] It is quite clear, then, that the barriers, which in these days protect the sanctuary of justice from all outward influence, did not in those times exist. The whole proceedings are conducted in a manner which strikes us as singularly loose and immethodical. Even the distinction between civil and criminal suits is scarcely recognised; so that in most of the private orations of Demosthenes, we are at a loss whether to regard the accuser as a prosecutor or a plaintiff.[5] The advocates themselves are either

[4] Æsch. cont. Tim. loc. cit.

[5] See especially that cont. Aphobum.

wholly unprofessional men, defending their own cause, or speakers trained in the rhetoric of the Ecclesia, and consequently more disposed to rest their claims on the grounds of common sense or general hearsay, than on those of legal technicalities or regular evidence. On the part of the judges there is the same anxiety to simplify the question at stake, to bring it to a level with their own understandings, to extricate themselves, in short, from a responsibility to which they felt unequal. So remarkably does this latter tendency display itself, that we find a particular class of actions called τιμητοὶ ἀγῶνες, in which the damages or penalty was left to be determined by the persons concerned in the suit.[6] That such a system should have succeeded at all, was owing, not to its intrinsic merits, but to the faults of that which it superseded, and above all to the extreme simplicity of the Grecian law, and the wonderful versatility of the Athenian character.[7]

From Athens we pass on to Rome. The Roman constitution had a sterner and a more severe ordeal to undergo. It was a long time before it could

[6] Apol. Socr. ch. xxv. Dem. in Mid. p. 523. In certain cases only the judges might propose a προστίμημα. Dem. c. Tim. 733.

[7] For the views here adopted see Schömann's Com. Ath., the speeches of Demosth. c. Aphobum Timocr. Midiam, with Buttmann's Annotations, etc. Arist. Vespæ, 230. Also Grote, ch. xlvi.

divide and distribute itself, so closely entwined were the fibres which gave it strength and consistency. At Rome also however, the judicial functions, intimately interwoven with the legislative and executive, were originally exercised by the king or his magistrates. At Rome also in process of time a new element was introduced. The interference of the popular assembly in all cases affecting the lives or political rights of the citizens was solemnly and distinctly recognised.[2] To the old burghers the right of appeal to their Curies is said to have been granted by Hostilius; to the Plebeian order it was afterwards extended in the first year of the republic.[9] Some writers have spoken of these appeals as implying the principle of a judgment by peers; inasmuch as the Patricians and Plebeians were both tried by their separate assemblies. This was not the case, however, any more than in the Athenian trials. For at the time of which we speak, the Populus and the Plebs are to be looked upon as forming not only a different order in the state, but a state in themselves, possessing in fact a separate jurisdiction.[1] In after-times, when an attempt was made,

[8] See Niebuhr, Hist. of Rome, also Lect. vol. ii. p. 23, and Cic. pro Rab. 4. "Ne de capite civium Romanorum injussu populi judicaretur." These assemblies were presided over at first by the Kings and Consuls; afterwards by the Quæstores Rerum Capitalium. Dict. Ant. p. 531.

[9] Liv. ii. 8.

[1] Niebuhr's History of Rome, vol. i. passim.

about the time of the Decemviri, to combine and amalgamate the two nations, if we may use the phrase, it was especially provided, that all state trials, whether of Plebeians or of Patricians, should take place before the common assembly of the Centuries.[2]

Here, then, we have the society again asserting its rights to the judicial power; the people taking their places beside the tribunal of the magistrate. In Athens, however, the one system had absorbed, or at least had adapted to its own purposes, the other. In Rome, where the political growth was so much more gradual and regular, they remained independent of each other. The people had their own jurisdiction.[3] The judicial magistrates, the prætors, the ædiles, and duumviri, retained their own powers. In cases where the people could not interfere, the latter, besides arranging preliminary processes, appointed the Judices or Jurymen, with whom the final decision rested. Although, therefore, they presided over this tribunal, we do not find that they exercised any actual controul over its proceedings. Like the Athenian Dicasts, the Roman Judices were empowered to judge of mat-

[2] See Cic. de Leg. iii. 19. and Am., Hist. of Rome, chap. xiv. By capital trials are meant those affecting the caput of citizens.

[3] i. e. the power of holding the "judicia populi."

ters of law as well as of fact, and, in the absence of any higher power, they took upon themselves to pardon on grounds of mercy, as well as to acquit on those of strict justice.[4] Thus to a certain extent both tribunals were subject to the same defects. Yet there was a marked difference between them; a difference too, which, for reasons hereafter to be explained, continued gradually to increase. In the first place, the Prætor himself, often a man of large professional knowledge, and elected to his office on account of that knowledge, would virtually exercise a more decided influence over the judges, whom he had himself enrolled, than the Archon, selected by lot, would be able to possess over men chosen by the same forms, and mostly of the same condition as himself.[5] In the next place, the Judices were in themselves a far less democratic body than the Heliæa. In the majority of cases they were chosen from the two highest orders in the state.[6] The

[4] Vid. Nieb. quoted ad p. 11. also Forsyth's Hortensius, p. 103 and seqq. What follows may seem somewhat vague. Yet it is almost impossible to fix the exact time at which the power of judging passed from the more popular to the more exclusive tribunal. The change had evidently begun in the time of Cicero. Compare his orations and particularly the treatise de Orat. with Tacitus's dialogue on the same subject. See also Pompon. de Orig. Juris Dig. i. 11.

[5] Vid. supra. p. 11. Compare on the other hand Cic. de Fin. "Turpe esse *patricio et nobili* jus in quo versaretur ignorare." ii. 2. sect. 43.

[6] See Dict. Ant. sub "Judex."

exclusive knowledge of the Jus Civile, so long retained by the Patricians,[8] must also have tended to perpetuate their influence in the law courts. Finally, the persons eligible to the office, even in the time of Augustus, did not exceed four thousand, a very small number, if we take into account either the extent and variety of their jurisdiction, or the growing populousness of the empire.[9]

But what, in the mean time, had become of the popular assemblies, which in early times were empowered to judge all questions relating to the civic privileges of Roman citizens? Even the cognizance of these cases was gradually passing away[1] from the hands of the people, into those of the Judices, or of magistrates, called Centumviri,[1] differing very little from the former, both in their constitution and in their general character. It is this change which the Roman jurists have expressed by saying, that in the place of the Judicia Populi were substituted the Judicia Publica.[2] Two reasons

[8] Liv. ix. 43.

[9] This very fact is of itself sufficient to distinguish the Roman Judex from the Athenian Dicast. Still less feasible is the opinion of Montesquieu, who sees in the former only a faithful representation of the English Juryman of modern times.

[1] Vid. Cic. de Orat. i. 36. Plin. Ep. v. 21. and Dict. Ant. sub voce.

[2] Dict. Ant. sub v. "Judex." "The judicia publica of the later republican period represent the Judicia Populi of earlier times." Compare for the preceding passages Forsyth's Hortentius, chap. iii. and the authorities there quoted.

may be assigned for it. In the first place, the assembly had found itself incapable of grappling with the increasing intricacy of legal questions. In the next place, the tribes or centuries had long ceased to represent the whole nation, and in consequence were gradually losing the power which belonged to them when they comprehended within their number all the free citizens of the republic.

Thus in the last days of the commonwealth the voice of the people was beginning to be no longer heard through the courts of the Forum. The citizen was making way for the jurist, the popular advocate for the professional lawyer. Under the Cæsars the change became complete. Yet here again we must pause to notice the rise of a new element, which had sprung up in the very heart of the empire, and yet was in some degree opposed to its spirit. That element was the municipal system. In the imperial and municipal organization we behold the two rival principles of Roman government, the centripetal and the centrifugal forces of the Roman world.[3] At first they appear nearly balanced. In the provinces the principal judicial functions were, in some places, discharged by the governor or representative of the Cæsars.[4] In other

[3] Guizot's Civilization of Europe, lect. 2.

[4] "Les hommes d'affaires de l'empereur avaient l'administration de

towns—in those, for instance, which possessed the Jus Italicum—they appertained to the municipal magistrates. But the Municipia were not, like the corporations of the middle ages, free and enterprising bodies, enriched by commerce, strengthened by an internal feeling of confidence, recruited moreover by the frequent adoption of fresh citizens.[5] Essentially exclusive in their nature, they gradually dwindled down into worn out oligarchies, and longed at last to cast away privileges which they felt only as burdens.[6] Thus in the place of the Curiales, the municipal or local aristocracy, stepped in the political nobility, the representatives of the central power.[7] Meanwhile the ascendancy of that power was everywhere displaying itself. The saying of Louis XIV, "L'état c'est moi," might have come with equal justice from one of the Cæsars. In the words of Ulpian, he was "solus conditor et interpres legum," the fountain and representative of the law, the dispensation of which belonged to his agents and, in cases of appeal, to himself.[8] At first indeed, like

la justice entre les sujets eux-mêmes sauf deux exceptions. Certaines villes des Gaules possédaient ce qu'on appelait *jus Italicum*, le droit Italique."—Guizot, leç. 2.

[5] See this view drawn out by Guizot, series iii. lect. 18th.

[6] See Savigny Gesch. des römischen Rechts. chap. ii. leç. 11 and 12. et seqq. [7] Vid. Savigny loc. cit. and Guizot, leç. ii.

[8] Hence the rescripta described by Gaius (i. 72.) consisting of epistolæ and subscriptiones. Compare the famous epistle of Pliny, x. 2.

the Prætors of the republic, these delegates administered justice through the intervention of judices similar to those who existed in earlier times. By degrees, however, the appointment of these officers became of rarer occurrence.[9] In the provinces especially, the most important cases were, before the time of Diocletian, decided by what were called "extraordinariæ cognitiones,"[1] conducted solely by the representatives of the Cæsars; not, as formerly, in open courts, but before a secret tribunal.[2] Thus it was the natural tendency of a pure despotism to concentrate and absorb back into itself all the power and vitality, which a healthier system would have permitted to circulate through all its members. At the same time arose the class of professional jurists, the crown lawyers, as they might be called, of the empire.[3] The complex and voluminous character of the Roman law, while it seemed to justify the

[9] "Peu à peu, à mesure que le despotisme impérial s'établit et que les anciennes libertés disparurent, l'intervention du Judex devint moins régulière."—Guizot, leç. 2.

[1] Guizot loc. cit.

[2] "Under the despotism of the later emperors, one of those Roman institutions which is essential to the proper administration of justice entirely disappeared."—Note to Discourse on Roman Jurispr. by Prof. Long, p. 67.

[3] Long says (p. 54, note) that "the early jurisprudents from Papirius to Scævola must not be put in the same class with the jurisprudents who followed them." See also the rest of the Discourse, from which, as well as from Savigny's work, many of these remarks have been borrowed.

preponderance of professional men, gave to their knowledge an ascendancy, which it had never merited or acquired under a simpler jurisprudence. Raised to power and encouraged by the Imperial régime, these men tended by the whole spirit of their writings and ideas to systematise and confirm it. Like the "noblesse de la robe," in France, they gradually found their way to the most important offices of the state. Those offices they everywhere impressed with their own character. Industrious in promoting their theories of absolute power, yet rigidly enforcing the doctrines of mutual relations and rights, they became mainly instrumental in the establishment of a despotism, more complete and better organised than any which the world has ever beheld.[4]

Thus the Greek and Roman systems, nearly related as they at first appear, ultimately assumed a very different character. Their influence on after-ages has been proportionably dissimilar. The Greek system was the creation of a civilization, complete indeed in itself, but necessarily transient and limited, because incapable of a perfect fusion with any foreign element. It was the merit of the Romans, on the other hand, to widen and adapt their narrow

[4] Compare Gibbon's Roman Empire, passim.

institutions in proportion to the growth of their empire. Thus we see that their jurisprudence, which, perhaps, never entirely lost its hold on the nations of Europe,[5] has materially influenced, and in many cases served as a foundation for, modern judicial codes. We are about to compare this system with institutions utterly opposed to it in their original spirit, in their development, in their results. Yet, however great the opposition may be, we see the two principles, at a comparatively early period of modern history, struggling to preserve a co-ordinate existence, sometimes even to unite and combine. Before we can properly estimate the characteristics of our modern jurisprudence, we must pause to unravel its elements. We must discriminate between those, which are really of modern origin, and those which, primarily borrowed from an earlier civilization, have afterwards become naturalized among us. The solution of this problem will, by placing before us all the materials of the modern judicial code, give us an opportunity of comparing it, not only with those institutions of antiquity which in a great measure form its basis, but with principles and ideas which it has never

[5] See Savigny, vols. i. and ii. Guizot, Hist. of Civil. lect. xi. &c. Also Robertson's Charles V. sect. 7, and note xxv. Hume's Hist. of Eng. ch. xxiii., &c.

appropriated, with the forms and features of a legislation entirely passed away.

While the Roman empire was approaching its dissolution, a new germ of life was struggling into existence—the life of the Teutonic nations of the north. In the conflict which ensued between the Roman and Germanic character, we have the commencement of a struggle, which was destined to agitate the world for centuries after the phase under which it originally presented itself had disappeared. Roman civilization organised the social system, German barbarism developed individual freedom. The inhabitants of the north, dwelling in their scattered tents, driven in upon themselves by the stern rigour of a northern climate,[6] early acquired a habit of self-reliance and self-respect, unknown amidst the social influences of a more genial sky. There is something in the very name, Franks or Freemen, which impresses us with an idea of personal independence, wholly opposed, not only to the spirit of Roman monarchy, but to that of

[6] See Schlegel, Hist. of Dram. Literature, lect. iii. Also Guizot, series iii. lect. xi. et passim. Nothing illustrates this better than the *personal laws* of the German conquerors. So Savigny, Geschichte des römischen Rechts: "Nach der herrschenden Ansicht ist das System der persönlichen Rechte von jeher bey allen germanischen Stämmen gültig gewesen, und es pflegt wohl aus der Freyheitsliebe der Germanen erklärt zu werden."

Grecian democracy. Look at the early history of the latter. We see all along an attempt to amalgamate and absorb into each other different interests, to give consistency to the society by making its members interdependent. The tendency of their institutions was, either indirectly, or in some cases, as in that of the Ostracism, directly, to check all individual aspirations.[8] Turn to that part of their polity with which we are immediately concerned. We find in the speeches of the Greek orators few allusions to the sacredness of personal freedom, to the paramount importance of individual rights. It is the State which suffers by the acquittal of a guilty man, by the expulsion of a virtuous citizen.[9] As we before hinted, there was but little difference between the deliberate assembly and the court of the judges. The judicial capacity of the latter was merged in their political character. They were not judges, because they were citizens.[9]

Is this the character of the law courts of the dark ages? Take, for example, the earliest assemblies with which we are acquainted; the meetings of the "Lendes" in France, and of the hundredmen in Saxon England. What appears to have occupied

[8] See the question of the Ostracism as discussed by Grote, ch. xxxi.
[9] Compare note to p. 14. and Grote, chap. xlvi.

the chief place in their deliberations? Evidently the administration of justice.[1] They were emphatically judicial courts, and, what is more, were always local. We will cite one or two instances from the old German codes.

"Let all free men meet on the days fixed, where the judge shall order, and let no person dare omit coming to the court."[2]

And again:

"If any man gain his cause in the Mâl, and by law, the Rachimburgi (or free and notable men) must explain to him the law by which his cause has been determined."[3]

May we not here trace the germ of a principle which in after-times has served as the basis of modern judicature? True it is, that this principle was as yet very indistinctly recognised. Even in England it is probable that the jury were in early times both witnesses and judges; they judged, that is, of facts which had come under their personal notice.[4] In these tribunals the doctrine of the

[1] See Guizot, series iii. lect. iv. Palgrave on English Commonwealth, i. p. 240, &c.

[2] Law of the Boiares, tit. xv. c. i.

[3] Salic Law, tit. lix. quoted by Guizot.

[4] See the question made very clear by Palgrave, Eng. Commonw. vol. i. p. 243, and compare Hallam's Middle Ages, vol. of additional notes, note 138.

"judgment by peers," as confirmed by Magna Charta, and by the subsequent enactments of Henry III., is but very imperfectly realised. Yet we recognise in their constitution that evident jealousy of all external jurisdiction, that impatience of all foreign interference, which is a main feature of the system. The ordinance of the judicial combat is, perhaps, only a rude expression of the same feeling. But let us look forward to a later period; these principles have developed themselves, have assumed a definite form, have become an institution.

Feudalism was only the after-growth of barbarism. It was barbarism systematized and regulated; yet it always retained traces of its rude birth. It was the will of the individual which predominated throughout it.[5] At the last it outgrew itself, and became turbulent and excessive. Yet had it its own forms, above all, its own ideas of justice, regular in the highest degree and consistent. It established at once a gradation of ranks, and a scale of personal duties, miserably fulfilled indeed, but nevertheless indisputably acknowledged.[6] For never had principles and practices been kept so far apart as under this system.[7] In no period of history is it so difficult to

[5] Guizot, as quoted in p. 23.

[6] See these duties carefully drawn out by Guizot, lect. ix.—xi. of 3rd ser. [7] Hallam's Mid. Ages, chap. ix. "State of Society."

draw general conclusions from facts as they stood. If we look at the actual outrages of the feudal barons, the judicial system seems wholly ignored: if we look at the genius of their constitutions, it appears exclusively prominent.[8] Happily, in this country the latter has outlived the former. The old baronial castles stand gloomy and deserted; but in the spirit of personal independence which they fostered, they have bequeathed a sacred heirloom to posterity, which has survived the clash of contending elements, and maintained its place amidst their fusion.

It is then to the *principles* only of feudal jurisdiction that we confine ourselves. They have been thus described; "In the primitive feudal society, still pure from the mixture of foreign elements, there was no special class invested with the right of judging; the members of the society itself—that is, the possessors of fiefs were called upon to examine into and pronounce between the rights in dispute * * * * . Thus judgment by peers became the fundamental element of feudal society."[9]

Here then we have two facts. In the first place, jurisdiction was local; in the second place, it was conducted by the peers of the accused, presided

[8] Vide note ad p. 25. [9] Guizot, lect. x. of 3rd series.

over, of course, by their suzerain or natural superior. Of the three systems of judicature which we originally described, it is clearly the third, which had never appeared in ancient times, which is here denoted. The judges are no longer the representatives of the sovereign or of the state; they are the representatives of the individual whom they try. Such was the theory of personal freedom under the feudal régime. The peers of the accused heard the complaints against him, decided on their validity, and pronounced sentence on him, if convicted. They did so by virtue of the personal contract, which bound them together as the vassals of one suzerain. From them there was originally no appeal. Their verdict was as decisive as their functions were complete.[1]

Such a system could only exist thus exclusively under two conditions. It required, on the one hand, a clear recognition of mutual internal relations among the vassals themselves; on the other hand, an isolation from all further social influences. The growth of a complex civilization, the development

[1] Compare also the following passage. "Anciennement les fonctions administratives et judiciaires n'étoient pas distinctes. Du temps de la liberté des Germains, et même long temps après, les plaids de la nation ou ceux du comté rendoient la justice et administroient les intérêts nationaux ou locaux dans une seule et même assemblée."—Meyer, Esprit des Inst. Jud. lib. v. c. 11.

of a national legislation, demanded the more complicated exercise of more extended powers. It had soon a rival to encounter. The eleventh century witnessed the beginning of the long struggle which for so many years convulsed Western Europe; the struggle between the kings and the barons, between feudalism and monarchy.[1] On the one side was ranged the genius of the old Roman empire, the maxims of Charlemagne and his successors; on the other, the spirit of modern institutions, of the common laws and customs which had everywhere sprung up. At the beginning of this period, the feudal courts of which we have just spoken, the courts of the lord of the manor, as they were called in England,[2] were the principal assemblages for the administration of justice. Side by side with this system, we recognise a new institution springing up, that of professional magistrates appointed by the king to try important issues at law. In France these men were called "baillies," who under Philip the Fair became one of the chief means of undermining the feudal jurisdiction.[3] At first these

[1] Cf. Guizot, xii. xiii. xiv. lectures, of 3rd series; Sismondi, Hist. of France, part iii. chap. 1; Savigny, later books, passim; Allen's Hist. of the Prerogative.

[2] Hallam's Middle Ages, chap. viii.; Hist. of Eng. Const., and article in Edinb. Review for 1822, xxxvi. 287.

[3] Guizot, lect. xiv. and xv. Parliaments were unknown in France before the time of St. Louis. Compare Bernardi's Hist. du Droit de la France, p. 331.

magistrates made their circuits through the country, still administering justice at the old local courts. Gradually, however, as the kings became more absolute, attempts were made to transfer to a common centre the exercise of the judicial power; an object which was at last accomplished by the establishment of the parliament of Paris. In England too, the king's ordinary council, and afterwards the three tribunals at Westminster, have, in the time of the Normans, become the regular channels of justice and have absorbed into themselves the business which had before been transacted in the provincial courts.[4] So peremptory, as legislation advanced, became the demand for professional knowledge and enlarged experience. There is one great difference, however, between the history of provincial jurisdiction in England and France. In the latter country it was at first confounded with, and then superseded by, that of the "baillies" and of the parliament of Paris. In England it was never entirely suspended. For a long time it preserved a separate existence. Confirmed by Magna Charta, and by subsequent enactments, it was, at last, by the highly important institution of the Justices of Assize, received into and incorporated with the rival system.[5]

[4] See this drawn out by Hallam, Middle Ages, ch. viii.

[5] Hallam, ut supra.

At the same time was gradually accomplished the partition of the judicial functions between the king's judges, the remnant of the Roman system, and the local juries, the offspring of the feudal organization—a principle which, as is well known, forms the groundwork of our English jurisprudence. On the continent the Roman law had been everywhere revived.[6] Its tendency was to check the growth of the old national institutions, to crush and paralyse, in particular, the jury system, to impede the separation of the judicial functions, the only true guarantee of its efficacy. The great monarchs of Europe found it a convenient instrument for the acquisition of absolute power. Aided by the servile temper of the crown lawyers, they everywhere encouraged its ascendancy.[7] The nobility, weakened and depressed among themselves, were too far separated from the people to care about their rights. In England, on the contrary, the cause

[6] Cf. Montesq. Espr. des Loix, lib. xlii., where it is said that Philip the Fair forced all jurists to learn the laws of Justinian. Cf. Hallam's Middle Ages, vol. iii. p. 516. "The Roman law forms the acknowledged basis of decision in all the Germanic tribunals, sparingly modified by the ancient feudal customs, which the jurists of the empire reduce within narrow bounds." Compare Blackstone, vol. i. p. 5. (edit. 1823.) and Long's Discourses, passim, esp. p. 88, "Germany, which was never conquered by the Romans, has received through the Germanic empire the Roman law, as its common law."

[7] See the preceding note.

of the barons and the commons was one.[8] It was by the swords of the English barons that the laws of England were ratified and defended.[9] It was by the consent of the English people that they were respected and maintained. Yet it was long before their empire was universally established. The civil or canon laws, though proscribed by statute and by the general feeling of the nation, still maintained their place in the courts of equity.[1] The ecclesiastics, as a body, naturally more subject to Roman influence, although excluded from the other tribunals, long retained the office of Chancellor.[2] Yet the common law never ceased, as in other countries, to be the law of the land.[3] Eminently national, both in its origin and in its

[8] See Guizot, Causes of Eng. Revol., publ. 1850, and Hist. of Eng. Revol. ch. i. [9] See Hallam, ch. viii.

[1] For the causes of this, and the connection between "Utiles Actiones" and our proceedings in Equity, see Spence's "Equitable Jurisd. of the Court of Chancery," vol. i. p. 211; also Long, p. 59.

[2] Blackstone, vol. i. p. 20. Cf. Spence, vol. i. p. 334.

[3] By the parliament of Rich. II. it was decreed, "that the Common law never hath been nor shall be governed by the Civil law." Hence old writers, as Blackstone, Hume, and Robertson, have gone so far as to deny that the Civil law exercised any influence on the Common law, a remark which Spence and Long, p. 88, &c., have shown to be very erroneous. The fact is, that in England many principles of the Civil law became imperceptibly part of the Common law. It is to the fusion of the two systems that the complex character of our law is to be attributed. See also Burke's Abridgment of English History, iii. 9.

character, it has stood its ground against the rude shocks of popular excitement, against the more dangerous, because the more insidious encroachments of royal ambition. With the preservation of the common law was bound up the existence of the jury system. Trammelled and nullified as it often was, that system remained the only one recognised by the theory of the constitution; until at last, by the revolution of 1688, restricted and limited to its proper sphere, it became within that sphere unshackled and omnipotent.[4] Thus the hereditary maxim of the English law, "*De facto respondent juratores, de jure judices*," was fully confirmed.[5] The cognizance of questions of fact was reserved for the jury of peers; the cognizance of the applicability of the law was entrusted to the professional magistrate alone.

We have seen how the modern judicial code, as it has a two-fold origin, presents also two sides to our view. Such an organization was necessarily favourable to a more varied distribution of the judicial powers. In England several other causes contributed to bring about the same result. During the comparative cessation of political disturbances which characterized the eighteenth century, greater

[4] Hallam's Const. Hist. i. 233. ii. 172. [5] Ibid. vol. i. 6. note.

leisure and opportunity was afforded for the theoretical study of the common law. The result of the analysis was a still more minute subdivision of its functions, and consequently a still greater precision in its administration. Yet even in earlier times the spirit of the English code had always been against an accumulation of power in the hands of a single functionary. Before the reign of King John we already hear of three tribunals, two of which exercised a separate jurisdiction, while the third, that of the King's Bench, served in cases of appeal, as a check upon one of them.[6] The history of the court of chancery furnishes us with a still more remarkable exemplification of the same tendency. This tribunal, the most curious perhaps of all the ancient legal institutions, was erected for the trial of cases to which the iron rule of the common law could not adapt itself.[7] The institution, however, was in advance of the age which witnessed its birth. The limits of its prerogatives were too nice to be discriminated by unphilosophic minds, and they were constantly impugned. Every body has heard of the famous contest between Lord Bacon and Sir Edward Coke, as late as the reign of

[6] Hallam's Midd. Ages, chap. viii.

[7] The principles of which were "honesty, equity, and conscience." —Spence, vol. i. p. 339.

James I.;[8] nor was this the only case of a collision between rival jurisdictions. The struggles between the parliament and the common law judges, be tween the lay and ecclesiastical tribunals, before and after the Reformation, form a very important part of our legal history.[9] Thus the progress of our modern judiciary modifications has been towards Distribution and Distinction. In the ancient world no such tendency appears. At Athens, indeed, the functions of the Archons were divided. Even the Heliæa separated itself off into different courts.[1] Yet there was no real distinction between all these tribunals. The officers who filled them did not belong to a separate class or order in the state; they did not represent separate interests. At Rome too (where a previous preparation on the part of the magistrate was held indispensable)[2] the imperial lawyers seldom confined themselves to any one branch of the law, which was, by its very nature, something entire and inseparable.[3] Thus there was

[8] Bacon, ii. 500, &c. Hallam's Const. Hist. vol. i. p. 346.

[9] Hallam's Middle Ages and Const. Hist. passim.

[1] Dict. Antiq. sub v. "Dicasterium."

[2] Vid. Cicero, quoted ad p. 23.

[3] This must be understood with some restriction. Vid. note ad p. 32. That the English system contains many more branches than any other is well known. Thus Blackstone (vol. iii. p. 49.) says, "The distinction between equity and law courts is not at present known in

none of that jealousy of exclusive privileges which in modern times has produced, not only the minute subdivision of the administrative functions, but has displayed itself in the twofold establishment of the Grand and Petty Juries.

It will be seen, that we have spoken more particularly of the administration of justice as it is conducted in England. At the same time it must be remembered, that of all the early modern codes, there was none which preserved itself so free from the influence of the Roman law, as our own; and consequently, that there is none which deserves to be so particularly considered in an attempt to compare the principles of ancient and modern jurisprudence. As might have been expected, then, it is in the English judicature that the tendency which we noticed as distinguishing the two systems peculiarly displays itself. Nor does the remark apply only to the final dispensation of justice in this country; it is equally true of its preliminary processes. These latter, expressed by the word ἀπαγωγή,[4] were in Athens conducted by

any other country." We may add that the distinction, so often insisted upon by Roman lawyers, between the Jus Civile and the Jus Gentium was a distinction not so much between different branches as between different systems of law.

[4] See Dict. Antiq. sub voce. The case of State Trials at Athens, is perhaps an exception.

the Thesmothetæ. At Rome they went under the name of the "Actio in Jure," and were managed by the Prætor alone.[3] Both of these officers not only carried up the suit to the higher tribunal, but superintended and directed the investigation which followed. Thus they fulfilled the duties of police magistrates, of a grand jury, and in some sense of judges also. With us, on the contrary, the apprehension and committal of offenders, the subsequent weighing of the evidence, and, lastly, the management of the trial according to the forms of law, have been entrusted to functionaries, not only peculiarly fitted for the parts which they have to perform, but likely from professional and local differences to remain entirely uninfluenced by each other's decisions. Nor must we forget that the right of pardoning offenders, on other grounds besides those of strict justice, so often, in ancient times, usurped by the judges themselves,[4] has been vested, as a separate prerogative, in the hands of the sovereign. Thus less room is left for those capricious acquittals which were so frequent at Athens and Rome, and which sometimes appear almost ridiculous to a modern reader.[5] It is re-

[3] Ibid.

[4] See note ad p. 11.

[5] Compare Cic. de Orat. ii. 26; Cic. Brut. passim; Quint. ii. 15. Also Apol. Socr., &c.

markable too, that though, as a matter of fact, the decisions of the ancient courts more often leaned to the side of mercy, the protection afforded to the accused was far less real and stable than in the present day. The necessary processes are greatly multiplied and extended, a far stricter adherence to the formalities of the law is required; above all, a far greater delay is interposed between the preliminary procedure and the final adjudication.[6] Again, in Rome and Athens the verdict was decided by a majority of voices. In our own country,[7] at least in criminal cases, it is required that the condemnation of the accused should be authorized by the unanimous concurrence of his peers. This latter proviso, which at first sight appears as if it could be dispensed with without vitally affecting the character of our juries, lies in reality at the very basis of the institution. We have already seen what was its principle; how it vested the most important portion of the investigation in men connected with the accused by the ties of local and social sympathies, ties, in former days far stronger and more real than at present. These men were

[6] In Rome the proceedings "in judicio" followed on the third day after those "in jure." Hence the word *Comperendinatio*.

[7] This constitutes a great difference between the English and French juries.

justly termed the peers of the accused, and, as his equals, they were, of course, equals of each other; equals, that is, in rank and the feelings which attach to it, and, as such, peculiarly free from the influence of those causes which, as we so often find, will produce difference of opinion, even on mere matters of fact. Thus as they looked at the same question through the same medium, without any disturbing force to break or turn aside the uninterrupted line of their moral vision, it seemed natural to demand that their conclusions should be strictly uniform. But, on the other hand, in order to secure even the prospect of this unanimity it became necessary carefully to restrict the subjects of which the juries took cognizance. Questions of fact may appear the same to all men who have been enlightened by the same evidence, and whose bias (if they are not free from all prejudices) lies at least in the same direction.[8] If, on the other hand, you introduce to their consideration matters which cannot be thoroughly understood without previous information and professional training, points in which any twelve men may be expected

[8] "Le jury suppose des concitoyens, des compatriotes, des voisins. C'est sur la facile réunion des jurés, sur la communauté de sentimens et d'habitudes, qui les unit, sur les moyens qu'ils en tirent pour démêler et apprécier les faits, que reposent la plupart des avantages de l'institution."—Guizot, Leç. x.

materially to differ, you at once open the door to differences as various as the media through which each of them regards the case in question. Thus the great check on the increasing of the power of the jurors has been the impossibility of attaining unanimity. Extend their province, and you destroy their practical efficiency.

It is indeed true, that something more than the cognizance of mere matters of fact, seems by our law to be left to the jury. Several eminent legal writers have dwelt at length on the right of the jury without the direction of the judge to find a *general verdict* in criminal cases, where that verdict may be said not only to determine whether the facts stated in the indictment are true, but whether, supposing them to be true, they necessarily imply guilt.[1] We perpetually find, too, that the intention of the accused as inferred from the evidence, is left to the decision of the jurors. Yet, as Hallam has remarked, "there are rules in criminal proceedings which supersede this consideration, and where, as it is expressed, the law presumes the intention in determining the offence.[1]" Thus, although it might not be quite accurate to say that the decision of the jury is restricted to the overt fact, where the

[1] State Trials, vi. 1013. [1] Hallam's Const. Hist. ii. p. 154.

intention admits of separate consideration, yet it is right thus to limit it, wherever the law, as we before said, implies the intention in the fact.

The minute nature of such distinctions as these, as well as the nice separation between the provinces of different jurisdictions, so generally characteristic of our legal system, have, it must be confessed, in former times furnished a handle for contentions, which sometimes threatened to prove dangerous to civil order and to the liberties of the nation. Nor perhaps could they in the present day be maintained so exactly, were it not for the complex and voluminous character of our laws, which, by rendering them unapproachable to men of ordinary education, invests with an almost mysterious importance those who have penetrated their inmost precincts. In Athens every citizen, in republican Rome every patrician, was a lawyer. The knowledge which in our own time is lodged in the hands of a profession, proud of its learning and jealous of its privileges, was in those commonwealths shared either by the whole community, or by a large portion of it. In this respect our system seems to approach much more nearly to that of the later Roman jurisprudence, were it not for the popular element which it likewise contains. In periods of great excitement it is not surprising that this ele-

ment should have become unduly powerful; that party zeal or prejudice should have overstepped the lines drawn by Blackstone or Coke. Yet in ordinary times the influence of professional learning and skill has always regained its natural ascendancy. To many, indeed, that influence has appeared too strong. Even when legitimately exercised, it has been said, it cannot fail to paralyse the free decision of the jury, and so to encroach too far on their proper province.[2] On the other hand, it is to this same influence that we may attribute that respect for precedents, that fondness or technicalities, that jealousy of unprofessional interference, which constitutes such a striking difference between the courts of justice of our own day, and those of the Grecian and Roman republics.

It must not be supposed, however, that the spirit of subtle and minute analysis which characterizes the legal systems of modern Europe, and none so much as those of our own country, is unalloyed by serious disadvantages. The common law of England, irregular and unmethodical in its nature and origin, the free growth of the great practical English mind,[3] has of late years increased so

[2] See Grote, chap. xlvi. where he enlarges on the superior advantages of the Greek system in this respect.

[3] Cf. Blackstone, Introd., and Hallam's Middle Ages, chap. viii.

portentously, both in magnitude and intricacy, that the life of a single man, devoted to the most engrossing of all studies, appears barely sufficient to ensure even a partial familiarity with its mazy labyrinths. In this manner the cautious policy of our legislature on the one hand, and the technical spirit of our lawyers on the other, have opened the door to evasions and litigious quibblings, which, under circumstances entirely different, seem likely to prove as dangerous to the cause of truth as the declamations of Gorgias, or the sophisms of Protagoras.

But let us return to the point which we before discussed. We saw that the Athenian tribunals were virtually political assemblies, borne away by party zeal, and influenced by party arguments. Even where no such fermentation was at work, the judge was still essentially a citizen; and as such, it was to the welfare of the state, rather than to the precise merits of the case, to the κοινῇ σύμφερον rather than to the strict δίκαιον, that he too often looked. The Comitia Centuriata, too, the great national assembly of republican Rome, were competent to try criminals not merely on what we call state charges, but often for offences which with us would be considered referable to an ordinary tribunal:[4] so com-

[4] Dict. of Antiq. sub v. Judex.

pletely at times were the legislative and judicial functions interwoven and identified. Not that, even in modern times and in our own country, a distinction so obviously just and salutary has been always preserved. The constitutional history of England is full of inconsistencies. During the memorable struggle between the crown and the parliament, we have numerous instances of attempts on both sides to subvert a principle so essential to our constitution. The establishment of the Star chamber, and the extension of its power, on the one hand, and the bill of Strafford's attainder on the other, were dangerous precedents, chiefly because they made the judicial functions an offshoot of the executive or the legislative,[5] and by this means vested the power over life and property in a body of men, heated with the passions and prejudices of political assemblies. When the powers of legislating and judging, too, are placed in the same hands, a further absurdity ensues. The judge, who is naturally the servant of the law, is placed above

[5] Compare Montesquieu, Esprit des Loix, vi. 6, and Bacon's remark, De Augm. Scient. Aphor. 44: "Hoc si fieret, judex prorsus transiret in legislatorem, atque omnia ex arbitrio fluerent." Plato, however, was of a different opinion. Vid. note ad p. 9. For what follows see Burke's speech on the motion on the Middlesex election: "The judge goes to justice and discretion at second hand; he works upon a fixed rule, of which he has not the making, but singly and solely the application to the case."

the law. He becomes the arbiter of that which he ought to obey. That such an exercise of power, indeed, as a bill of attainder, is in most extreme cases unjust and unlawful, it would perhaps be contrary, not only to the reason of things, but even to the spirit of our constitution, to assert. Yet every one will be ready to allow, that the advantages gained by entrusting a cause to the course of the common law are so great, that nothing but the most urgent necessity can warrant a departure from its rules.[6]

Indeed, it is from the virtual infringement of the principle here laid down that the gross violations of justice which disgraced our tribunals before the time of the revolution mainly proceeded. Compare for a moment the decorous forms of modern justice, the august gravity, the unimpeachable integrity of her representatives, with the coarse insolence, the vague and party-coloured informations, the barefaced exhibitions of personal and political enmities, which appear in every page of our ancient State trials.[7] Is it not remarkable that the voice of popular excitement—that voice which demanded or sanctioned the judicial murder of Laud and Stafford, of Sidney and Russell, while

[6] See the question discussed, Hallam's Const. Hist. vol. i. p. 525-530.

[7] See, in particular, the details of the trial of sir Harry Vane and the duke of Norfolk, in the State Trials.

it is daily making itself more felt in the executive and legislative bodies of this country, has ceased to exert any influence over the proceedings of justice? In part we must ascribe this fact to the infinitely more regular manner in which the forms of law are enforced, to the extension of the privilege of counsel to the accused,[8] to the far higher spirit of morality which animates the legal profession. Yet it may be doubted whether these causes would be by themselves sufficient to ensure the impartiality of our judicial proceedings, if the character of our juries had not also materially changed. The tribunals of Greece, as we saw, were intended to represent the state. They were composed of men draughted indiscriminately from that state, who were not called upon to abandon a single prejudice or a single bias before they were enlisted on the panels of the Heliæa. In this respect it is impossible to deny that a great, although, as we see, a gradual change, has taken place in most modern countries. To dismiss from his mind all previous evidence, all preconceived opinion, is the first charge addressed to the English juror. Thus divorced for a time from all personal and party influences, absorbed, as it were, and attracted into a new sphere, he has become a far fitter instrument for the performance of the highest social duty which any human being can be called upon to fulfil.

[8] See some good remarks on this in Forsyth's Hortensius, p. 352.

Thus a twofold change has taken place in the judicial administration. Freed from external control, its internal workings have grown more complicated and more regular. Undoubtedly the two facts are not unconnected. The stream of justice could not divide and distribute itself before it was embanked and secured. In some sense too, its complexity has been the guarantee of its freedom, its limitation of its strength.

But although these two aspects of our judicial system seem mutually to produce and imply each other, the original source both of its complexity and of its freedom is to be sought still deeper —in the principles of human nature, in the progress of society itself. All those countless phenomena which we sum up under the abstract term Civilization are, as it were, set in the frame-work of Law. In proportion as they embody these different phenomena, the laws of a nation become a living picture of the whole national existence. Thus ancient jurisprudence was the reflex of ancient civilization. Simple and uniform, it was the development of a few principles, the expression of a few leading ideas. To the genius of modern society such uniformity is absolutely foreign. Its features are as varied, as its growth has been uncontrolled. A thousand conflicting impulses agitating and convulsing the social frame—a thou-

sand conflicting wants struggling to find a vent and an expression—these are what constitute its energy and its life. The lines which determine such variable relations have of necessity become endlessly perplexed. The administration of justice, dismissed by Aristotle with a few speculative remarks, has become a practical problem of stupendous difficulty. Yet in some degree, at least, that difficulty is the measure of superiority. The forms of justice, tested and analysed, have been purified and refined. The spirit has worked itself out in the letter; the very details of law have opposed their barriers to the passions of men. And how is it, we may ask, that this result has been accomplished? The answer we have already anticipated. It is because the principles of justice, more widely and variously investigated, have been found as evenly balanced, and yet as infinitely diversified, as the laws of the Universe itself. It is because a larger and a surer experience has taught us "that even one and the selfsame thing may, under divers considerations, be conveyed through many laws, and that to measure by any one kind of law all the actions of men were to confound the admirable order wherein God has disposed all laws, each, as in nature so in degree, distinct from one another."[1]

[1] Hooker's Eccles. Polity, lib. I, chap. xvi. 8.


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